

ENFORCEMENT OF THE FOOD AND DRUGS ACT.

JANUARY 8, 1910.—Ordered to be printed.

MR. MANN, from the Committee on Interstate and Foreign Commerce,
submitted the following

ADVERSE REPORT.

[To accompany H. Res. No. 67.]

The Committee on Interstate and Foreign Commerce, to whom was referred the resolution (H. Res. 67) calling upon the Secretary of the Department of Agriculture for certain information concerning the enforcement of the Food and Drugs Act, begs leave to report the said resolution back to the House, with a recommendation that it do lie upon the table.

When this resolution was referred to your committee, the Chairman of the committee, in accordance with the practice of the committee, referred the resolution to the Secretary of Agriculture for information, and there is included herewith, as a part of this report, two letters from the Secretary of Agriculture, the latter of which furnishes substantially all the information asked for in the resolution, so that the purpose of the resolution having been accomplished by the presentation to the House of the information requested by the resolution, there is no occasion for its passage.

The reasons for the presentation of the resolution are in part at least set forth in letters hereto attached as a part of this report, addressed to Hon. Halvor Steenerson, the author of the resolution. While there has been from time to time more or less criticism of the Department of Agriculture concerning the enforcement of the pure food law, still, in the main that criticism has been concerning the construction of the law in reference to the use of preservatives and in reference to the constituents of "blends" and especially the use of the term "blended whiskey." That the pure food law has been well executed is known to all who are familiar with the work done. There have been more than one hundred and ten food inspection decisions, prepared by the Board of Food and Drug Inspection in the Department of Agriculture and promulgated by that Department. These decisions are constructions of the pure food law. In each case, probably, some contention has been sustained and some contention overruled, but it is hardly fair for

people who have not had their own way in the decisions as to the construction of the law sustained to criticise the Department for not enforcing the law. The law has been enforced and a great number of cases have been commenced and tried during the past year and many fines have been imposed. Those who are most familiar with the law and with its construction and enforcement are proud of the record that has been made for the law and for its enforcement.

It appears from the excerpt from the Annual Report of the Solicitor of the Department of Agriculture for 1909, herewith attached and made a part of this report, that that Department, as well as the Department of Justice, has been very active in enforcing the Pure Food Law. And knowledge of the work of the Department of Agriculture in connection with the enforcement of the law will disclose that there is no justice in the insinuation sometimes made that the Department of Agriculture "pigeon-holes cases."

Letters from Secretary of Agriculture.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D. C., December 8, 1909.

HON. JAMES R. MANN,
House of Representatives.

DEAR SIR: I have your two letters enclosing copies of Resolutions 67 and 68. I will take steps to have reply made to you, giving a full outline of the work that has been done in the execution of the Pure Food and Drugs act.

Very truly yours

JAMES S. WILSON, *Secretary.*

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D. C., December 30, 1909.

HON. JAMES R. MANN, *Chairman,*
Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.

DEAR MR. MANN: Relative to House Resolution 67, I desire to inform you:

1. No executive order or direction has been made or issued seeking to suspend the operations or the enforcement of the Act of Congress of June 30, 1906, entitled "An Act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes."

2. Executive orders and directions have of course been made affecting the operation or the enforcement of the said Act. The more important of these orders have been published by the Department and are available for public distribution.

3. No order or direction has been made by the Secretary of Agriculture or the Agricultural Department exempting any person from the operation of the above Act or from prosecution for violations of said Act.

I thank you for calling my attention to this Resolution.

Very respectfully,

JAMES WILSON,
Secretary.

Excerpt from the annual report for 1909 of the Solicitor of the Department of Agriculture.

Four hundred and ninety-four cases of violations of the food and drugs act of June 30, 1906, were reported by the Department to the Attorney-General and United States attorneys during the fiscal year, 359 more than were so reported during the previous year. Of these 494 cases, 85 resulted in convictions in criminal prosecutions, almost wholly upon pleas of guilty, and the imposition of fines amounting to

\$2,002, and costs of equal, if not greater, amount, an accurate statement of which can not be given here as the figures were not available in time for this report; 98 resulted in decrees of condemnation and forfeiture under section 10 of the act, carrying with them costs of substantial amounts which were paid by claimants of the goods; 1 case resulted in a verdict for the defendant; in another case a motion of the United States attorney for leave to file an information was denied by the court; in 2 seizure cases the goods could not be found; in 1, answer of claimant was sustained and libel dismissed; in 2 seizure cases tried by a jury verdicts were found for claimant, under instruction of the court, and appeal taken by the Government, which is now pending in the Circuit Court of Appeals; 135 cases were dismissed either before action commenced or before issue raised in the courts; in 53 cases no action after report had been taken before the close of the year; and 74 criminal and 42 seizure cases were pending in the courts at the close of the year. It will be seen that of the cases reported during the year, 135 were dismissed. It must not be inferred from this that there was anything inherently defective in the evidence submitted by the Department in much the larger number of these cases. They all represented substantial violations of the act and the proof in all but a few of them was ample to sustain prosecutions, but due regard was had for circumstances of mitigation and palliation, and, in many instances, excuse, which commended themselves to that discretion which must reside in any Department of the Government charged with the duty of administering an act of Congress, and as a result the Department recommended to the Attorney-General and the United States attorney discontinuance of a number of these cases, either after or before action commenced. Other cases were abandoned because of slight imperfections in the chain of evidence to establish the interstate shipment. In addition to the above cases, both reported and finally determined during the year, there were 40 criminal and 10 seizure cases reported during the previous year, but finally disposed of during the present year by convictions and imposition of fines aggregating \$3,410, exclusive of about an equal amount of costs, and decrees of condemnation and forfeiture of goods with attendant costs on the claimants, thus amounting on the whole during the year to 125 convictions, with consequent fines of \$5,412, and 108 decrees of condemnation and forfeiture of many tons of goods.

Few of the cases under this act have been contested, the defendants in criminal and claimants in forfeiture cases seeming to prefer pleas of guilty and admissions of the allegations of the libels. There have been, therefore, very few questions raised for determination by the courts. Yet the most vital question, that of the constitutionality of the act, was raised by the claimants early in the year in the western district of Missouri in the case of the *United States v. 100 cases of Tepee apples* and 172 cases of *Tepee blackberries*, reported in Notice of Judgment No. 36 of the Department, wherein the court sustained the validity of the act. In two contested cases, both proceedings under section 10 for seizure, condemnation, and forfeiture of goods, one in the district of Maryland and the other in the northern district of West Virginia, the claimants excepted to the libels on the alleged ground that no hearing had been accorded them by the Secretary, their contention being that the hearing provided for by section 4 of the act extends as well to proceedings under section 10 as to criminal prosecutions under sections 1 and 2. Elaborate arguments were made in behalf of the claimants in an attempt to show a purpose on the part of Congress to extend this preliminary right in criminal cases to cases under section 10, but in well-considered opinions the courts overruled the contention, holding that section 4, so far as it provides for hearing before the Secretary, has no application to proceedings under section 10 directed against the goods themselves. The opinion of Judge Morris, of the district of Maryland, in the case of the *United States v. 50 barrels of whisky*, is reported in Circular No. 10 of this Office and in 165 Federal Reporter, 966. The opinion of Judge Dayton, of the northern district of West Virginia, in the case of the *United States v. 65 casks of liquid extracts*, is reported in 170 Federal Reporter, 449. It was also contended by the claimant in the case of the *United States v. 65 casks of liquid extracts*, above referred to, that the provision of section 8 of the act that a food or drug shall be deemed to be misbranded "if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine," etc., does not require a label to be placed on packages of foods and drugs containing these substances, and hence if the manufacturer and shipper of such goods omits to put a label on them, the content of alcohol, morphine, etc., need not be stated, and no violation of the act is committed. In other words, the substance of the argument was that if the package bear a label the content of alcohol must be stated thereon, but if no label is put on the package the content of alcohol need not be stated. This contention was argued by the claimant at much length and with apparent confidence in the correctness of this interpretation of the act, but the court overruled it.

One other question of importance was raised during the year. In a prosecution in the district of New Jersey against the Oriental Dragee Company for shipment of confectionery adulterated with metallic silver, the defendant contended that it was incumbent on the Government to allege in the information and prove at the trial that this silver was not only a mineral substance, but also that it was poisonous and deleterious or detrimental to health. It was further contended that the term "other mineral substance" in section 7 of the act should be construed, according to the principle of ejusdem generis, to include only mineral substances of the same particular description as those specifically mentioned in the preceding part of the sentence, and that, so construed, metallic silver was not included, and foods containing it are therefore not adulterated. In a well-considered opinion the court overruled the contention. The defendant was tried, convicted, and sentenced to pay a fine of \$100. The same question was also raised by defendant's demurrer in the case of *United States v. French Silver Dragee Company*, in the southern district of New York, but the demurrer was overruled, a plea of not guilty entered, and the case was pending for trial at the close of the year.

In January of the present fiscal year, as a result of Food Inspection Decision No. 100, wherein the Secretary published his findings that flour bleached with nitrogen peroxid is adulterated and misbranded, the Alsop Process Company, of St. Louis, Mo., filed its petition in the Supreme Court of the District of Columbia against the Secretary of Agriculture praying a writ of mandamus to compel the Secretary to withhold the recommendation of prosecutions against manufacturers and shippers of flour bleached by the Alsop process, owned and controlled by the petitioners, and to revoke, cancel, and annul the decision and refrain from circulating further copies of it. The answer of the Secretary denying the right of petitioners to the writ was duly filed and the issue thereby made elaborately argued, and the writ denied by the court. An appeal was prosecuted to the Court of Appeals of the District of Columbia, where the decision of the Supreme Court was sustained.

Near the close of the year a bill was filed in the Supreme Court of the District of Columbia by the Hipolite Egg Company against the Secretary of Agriculture, praying that an injunction be granted restraining the Secretary from further enforcement of the food and drugs act, both as respects the complainant and all others similarly affected by the act. This suit grew out of a proceeding under section 10 of the act, in the southern district of Illinois, for seizure and condemnation of 50 cases of eggs adulterated with boric acid, prepared by the Hipolite Egg Company and shipped by it from St. Louis, Mo., to Peoria, Ill. The basis of the prayer for an injunction is the alleged unconstitutionality of the act. The matter was presented to the court on behalf of complainants in June and a preliminary injunction refused, but a rule on the Secretary to show cause why an injunction should not be granted was allowed and made returnable in the early part of August. The case was pending on this rule at the close of the year.

Letters addressed to Representative Steenerson.

BALTIMORE, MD., May 12th, 1909.

Hon. Mr. STEENERSON,

House of Representatives, Washington, D. C.

MY DEAR SIR: The enclosed clipping was taken from one of our Baltimore papers yesterday, and afforded us a very great deal of pleasure to know that in the House of Representatives there is at last one Representative who had the interest of his constituents and countrymen enough in mind and at heart to call up the Department of Agriculture in reference to the enforcement of the Pure Food Law.

This Law though passed June 30th, 1906, almost unanimously by both the Senate and House yet it has never been enforced only to a meager extent, and so far as it refers to beverages, it has not been enforced at all.

Mr. Wilson, Secretary of Agriculture, has laid every obstacle he reasonably could in the way of enforcing the Law; Dr. Dunlop of the Department of Chemistry has strenuously opposed us, and Mr. Capers, Commissioner of Internal Revenue has been most strenuous against us, and although Ex-President Roosevelt on several occasions ruled that the Pure Food Law as relates to liquors should be enforced, and had it confirmed three or four times by the Department of Justice through Ex-Attorney General Bonaparte, yet we have been absolutely unable to get the Department of Agriculture or the Internal Revenue Department to raise a finger towards the enforcement of the Law.

The writer has on numerous occasions been before the Departments of Chemistry and Agriculture and before the Department of Justice and the President in company

with numerous other gentlemen and each time, of course, we were met by the manufacturers of impure products of various kinds, but mostly by the blenders, compounders, mixers, or you might say the debauchers of pure liquors. The wonder to us has been how a few hundred of this class of manufacturers, including the Coca Cola and Peruna people, could hold at bay through the heads of these Departments more than eighty millions of people who are clamoring for pure foods and an honest deal.

About a year or more ago we had a great deal of correspondence with some of these Departments trying to get them to do their duty, but finally quit in disgust.

The purpose of this letter is to thank you for the stand you have taken in this matter, and hoping you will meet with success, we are, with kind regards,

Yours very truly,

GEO. T. GAMBRILL.

BALTIMORE, MD., *May 18th, 1909.*

HON. H. STEENERSON,
House of Representatives, Washington, D. C.

MY DEAR SIR: I beg to hand you herewith copies of some correspondence we had a little more than a year ago with the Department of Agriculture and also with Ex-President Roosevelt. It only tends to show you how evasive Secretary Wilson was when asked for facts.

Up to this writing we have not anything further from him in substance than what this correspondence shows. We had other correspondence with Mr. Wilson, as well as with Commissioner Capers, but it is not necessary to burden you with this matter.

So far as this City is concerned, the Pure Food Law stands about as it did two years ago. As we understand it, some of the drug manufacturers have complied with the Law, so have some of the canners in putting up their fruits and vegetables, but the great majority of people call the Law a farce and they claim they never expect it to be enforced.

A copy of the letter we wrote in November 1908 we also enclose. To this letter we never received a reply.

So far as the business that I am most particularly interested in is concerned, that is the manufacturing of straight, rye whiskies, the Law has not been enforced at all. There have been a few seizures made of spirits and, of course, conviction followed, but it stopped right there. There is not a wholesale dealer, we think, in the land but what continues to use spirits, beading oil, ageing oil, etc. in his compounds. If we are correctly informed by the Department of Chemistry and Chemists generally, both beading oil and ageing oil are deadly poisons.

On page #4 of the pamphlet that we are enclosing we think Ex-Attorney General Bonaparte embodied in that paragraph the substance of the whole Pure Food Law.

Wishing you a great deal of success, I am,

Yours very truly,

GEO. T. GAMBRILL.

BALTIMORE, MD., *November 1908.*

DEAR SIR: The Congress of the United States passed June 30th, 1906, a Pure Food Law. This bill, as we remember, was passed almost unanimously by both the House of Representatives and the Senate, and while many manufacturers of various adulterated foods, blenders, compounders and mixers of wines and liquors raised various and earnest objections, yet all such objections have been over-ruled by the Department of Justice, and it seems that most manufacturers of foods and drugs are complying with the Law, but the whiskey mixers still hold the Law in defiance.

What the consumer wants to know is, how has this influence been brought to bear on the Department of Agriculture.

Saturday, October 30th, the Department of Justice called off all negotiations with the counsel of the mixers (Mr. Warwick Hough) and according to newspaper reports said to the Agriculture Department in substance, we are ready to enforce the Pure Food Law, but ten days have passed and nothing done, and from present indications nothing likely to be done, if the Agriculture Department can prevent it.

Our query is, why is it that this the *most important Law* that has been passed in the *last quarter of a century* is being held up by some unseen influence.

Who is this monster power that continues to force upon the American Citizens impure food and drink? Is it not about time the President should come forward and see that this Law is enforced, regardless of what the head of the Agriculture Department may wish?

Very truly yours,

(signed)

GEO. T. GAMBRILL.

15 WALL STREET,
New York City, May, 14, 1909.

HONORABLE STEENERSON,
House of Representatives, Washington, D. C.

DEAR SIR, It is with a great deal of pleasure that I note your inquiry as to the unauthorized suspension of the enforcement of certain clauses of the Pure Food Law. This Law was passed in 1906, but has through lack of enforcement, more or less, become a dead letter. It has done untold harm to some lines of trade, by the non enforcement of the clauses embracing these several trades. I trust you will keep up the good work which you have begun. With every wish for success, I beg to remain,

Very truly yours,

J. PARKES.

15 WALL STREET,
New York City, May 17, 1909.

HON. HALVOR STEENERSON,
House of Representatives, Washington, D. C.

DEAR SIR, I have the honor of acknowledging your favor of the 15th inst. regarding the Pure Food and Drug Act.

I would respectfully refer you to the daily violation of the provisions of the said act, so, far as it's provisions relate to the labeling of liquors and particularly whiskeys. I know from the press that "What is whiskey" although threshed out and keel hauled two years past appears still to be moot question, though the courts have passed upon it several times. I wish to be frank. I am interested as a stockholder in a company that distils and sells only pure rye. It is to the interest of the company that "What is whiskey" and how the various compounds and imitations should be labeled be decided one way or the other so that we will know where we are at.

The act was passed in 1906 and the delay in the interpretation and enforcement of the law is paralyzing the trade.

Very respectfully,

J. PARKES.

STATE OF WISCONSIN,
OFFICE OF DAIRY AND FOOD COMMISSION,
Madison, Wis., May 22, 1909.

HON. HALVOR STEENERSON,
House of Representatives, U. S., Washington, D. C.

MY DEAR SIR: Yours of May 13th was duly received, but excessive pressure of many urgent matters upon my time and attention has prevented my replying sooner.

There is a strong impression among dairy and food commissioners that the national food and drugs act is not being vigorously and uniformly enforced. A thorough and impartial investigation by Congress of the departments charged with enforcement of the national food and drugs act would disclose whether or not such impression is well founded. Such an investigation should result in ascertaining whether or not the cases of adulteration, as reported by the Bureau of Chemistry and the branch laboratories throughout the country as required by the national food and drugs act, have been prosecuted or whether 90 to 95% of those cases are pigeon-holed in the Secretary's office. If an investigation should show that such a percentage of cases is pigeon-holed, the complaints to which you refer in your letter would seem to be well founded and a thorough investigation would seem to be the only means by which the truth concerning such complaints can be ascertained.

Dairy and food commissioners in the very nature of things have not the data and cannot have the data to make positive affirmation as to the accuracy of their impression or the truthfulness of the complaints to which you refer, nor under the rigid discipline of departments at Washington could subordinates be expected to give information on these subjects except upon an investigation ordered by Congress. Whether or not it is true that investigations made by the department as to methods of producing foods have been deliberately withheld from publication can be determined only by investigation. Whether or not there is constant vacillation in the national food law enforcement, an undue yielding in response to the pressure of food adulterators resulting practically in the granting of immunity and partiality and thus virtually setting aside certain portions of the national food and drugs act, can be ascertained only by thorough and impartial investigation.

Very truly yours,

J. Q. EMERY, Commissioner.